

CORRECTED EXHIBIT B

Blackline

ROSEN & ASSOCIATES, P.C.

*Counsel to the Debtor ~~and Debtor~~
~~—in Possession~~/Plaintiff*

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Sanford P. Rosen

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

PRINCE FASHIONS, INC.,

Debtor.

Chapter 11

Case No. 19-23079 (RDD)

PRINCE FASHIONS, INC.,

Plaintiff.

Adv. Proc. No. —19— 08714
(RDD)

v.

60G 542 BROADWAY OWNER, LLC, and
542 HOLDING CORP.,

Defendants.

AMENDED COMPLAINT FOR DECLARATORY RELIEF

Prince Fashions, Inc., the above-captioned debtor and debtor in possession (the “**Debtor**”), by its attorneys, Rosen & Associates, P.C., as and for its complaint (the “**Complaint**”) against 60G 542 Broadway Owner, LLC (“**60G**”) and 542 Holding Corp. (“**Holding Corp.**” and collectively with 60G, the “**Defendants**”), respectfully represents as follows:

JURISDICTION, VENUE & STATUTORY PREDICATE

1. The Court has jurisdiction over this adversary proceeding as a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicate for the relief requested herein is 11 U.S.C. § 105, as supplemented by Rules 7001 and 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

4. ~~2.~~ The Debtor agrees to the entry of a final order or judgment by the Bankruptcy Court in this adversary proceeding.

THE PARTIES

5. ~~3.~~ The Debtor is a corporation, duly organized under the laws of the state of New York in 1974.

6. ~~4.~~ The Debtor has occupied certain commercial property , consisting of two retail store premises (the “**Premises**”), located in a building situated at 542 Broadway, New York, New York 10012 (the “**Building**”) since 1980, pursuant to a certain agreement of lease (the “**Lease**”) by and between the Debtor,¹ as tenant, and Holding Corp., as landlord.

7. ~~5.~~ The Lease is for a term of 99 years and has two 50-year options to renew.

~~6.~~ ~~The, the~~ extended term of the Lease runs for another 162 years.

8. ~~7.~~ Upon information and belief, Holding Corp. is a cooperative housing corporation, organized under the laws of the state of New York in or about ~~1990~~1980.

9. ~~8.~~ Upon information and belief, 60G is a limited liability company, authorized to conduct business in the state of New York.

¹ As assignee of 542 Equity Associates.

RELEVANT FACTS

A. History of the Premises ~~& Events Preceding the Sale~~

~~9. In May of 2015, Holding Corp. converted the Premises to a retail condominium.~~

~~10. Upon information and belief, 60G is the owner of the retail condominium in which the Premises are located and is the assignee of Holding Corp.'s interest as landlord under the Lease.~~

~~11. The transfer to 60G was merely part of an overall scheme by the Defendants to deprive the Debtor of its Lease, evidenced by the terms of 60G's mortgage note, which requires 60G to evict the Debtor and re-let the Premises at market neutral terms.~~

~~12. After taking title to the Premises, 60G immediately embarked on a campaign to terminate the Debtor's tenancy and deprive the Debtor of its valuable property interest.~~

~~13. At all relevant times~~from June 5, 1974 through April 1980, the Building was owned indirectly ~~owned and controlled~~ by David Silverstein ("Silverstein") acting through 542 Equities, Inc. and 542 Equities Associates ("542 Associates").

11. Upon information and belief, prior to April 1980, Silverstein was the sole principal of 542 Associates and had complete control of its affairs.

12. ~~14.~~ Upon information and belief, Silverstein resided in a residential apartment in the Building until the early 1990's.

13. Prior to April 1980, the Debtor was a commercial tenant of the Building.

14. Upon information and belief, on April 11, 1979, Silverstein, acting in the capacity of sole principal of Holding Corp. caused Holding Corp. to enter into the Lease with 542 Associates.

15. Upon information and belief, ~~in or around~~on April 11, 1979, Silverstein ~~decided~~caused 542 Associates and Holding Corp. to convert~~enter into~~ the ~~residential apartments in the Building to a cooperative and offered to sell the commercial unit to the Debtor~~Lease as part of his plan to either sell shares and proprietary lease related to the Premises or otherwise realize the value of the Premises through the sale of the Lease.

~~16. On April 11, 1980, in furtherance of his effort to convert the residential~~

~~apartments to cooperative units, Silverstein caused 542 Equities Associates (“Equities Associates”) to convey the deed to the Building to Holding Corp.~~ Upon information and belief, prior to the conversion of the Building to a cooperative, Silverstein, acting in the capacity of sole principal of Holding Corp., offered to cause Holding Corp. to sell shares and proprietary lease with respect to the Premises to the Debtor.

17. ~~At~~ Upon information and belief, prior to the ~~time~~ conversion of the Building to a cooperative ~~conversion~~, as an alternative to a sale of shares and proprietary lease in the Premises, Silverstein ~~was~~, acting in the capacity of cooperative sponsor, and sole principal of both ~~Equities~~ 542 Associates and Holding Corp., offered to sell the Debtor a long term lease that would constitute an ownership interest in the Premises.

18. Upon information and belief, the Debtor agreed to acquire the Premises through a series of transactions designed to achieve the sale to the Debtor of a long-term lease that would constitute an ownership interest in the Premises.

19. ~~18.~~ Upon information and belief, prior to April of 1980, Silverstein and the Debtor agreed to the terms of the purchase and sale of the Premises through a series of transactions designed to sell the Premises through a sale of a long-term lease.

20. On April 11, 1980, in furtherance of his effort to convert the Building to a cooperative, Silverstein caused 542 Associates to convey the deed to the Building to Holding Corp.

21. Upon information and belief, Silverstein caused 542 Associates to convey the deed to the Building to Holding Corp. for no present consideration, except for the expectation that, as cooperative sponsor, he could thereby cause the sale of the units, including the Premises, in the cooperative.

22. Upon information and belief, in or around April 1980, the residential portion of the Building became a cooperative.

23. Upon information and belief, in or around April 1980, when the residential portion of Building became a cooperative, Silverstein was also the sole principal of, and controlled, Holding Corp.

24. ~~19.~~ The agreement ~~of~~between Silverstein, as cooperative sponsor and sole principal of both 542 Associates and Holding Corp., and the Debtor resulted in the execution and delivery of three agreements, ~~all executed simultaneously on April 11, 1980:~~

(i) a “lease” agreement between Holding Corp., as “landlord” and ~~Equities~~542 Associates as “tenant” (i.e., the Lease), executed on April 11, 1979;

(ii) an *Assignment of Lease*, whereby ~~Equities~~542 Associates assigned to the Debtor all its interest in and to the Lease, executed on April 22, 1980; and

(iii) a security agreement executed April 11, 1980, between ~~Equities~~542 Associates and the Debtor, which memorialized the obligation of the Debtor to pay ~~Equities~~542 Associates \$40,000 (the “**Purchase Price**”) in consideration of its interest in and to the Lease (the “**Security Agreement**,” and together with the Lease and Assignment of Lease, the “**Prince Transfer Documents**,” and generally, the “**Prince Transfer**”).

25. ~~20.~~ The Prince Transfer Documents memorialized the transfer ~~by Equities Associates~~of the Premises to the Debtor ~~of its interest.~~

26. The Prince Transfer Documents were duly recorded in ~~and to~~ the Office of the ~~Premises~~City Register of the City of New York, New York County on June 2, 1980.

27. ~~21.~~ The Debtor subsequently paid the Purchase Price to ~~Equities~~542 Associates in full.

28. ~~22.~~ Upon information and belief, at the time of the Prince Transfer, Holding Corp. and 542 Associates were mere alter egos of one another, were both owned and controlled by

Silverstein, and for all purposes relating to the Prince Transfer were in fact one and the same.

29. Upon information and belief, at the time of the Prince Transfer, Holding Corp. and 542 Associates were not independent entities, but merely vehicles by which Silverstein, through Holding Corp., could convert the Building to a cooperative so as to realize the value of the residential portion through the purchases of shares, and to sell the commercial portion to the Debtor.

30. Upon information and belief, in order to convert the Building to a cooperative and comply with the requirements of the Office of the New York Attorney General, as the Internal Revenue Code, Silverstein had to sell the commercial portion of the Building.

31. Holding Corp., as alter ego of 542 Associates and owned and controlled by Silverstein, is bound to the Prince Transfer Documents.

32. Upon information and belief, the property records indicate that that the Purchase Price represented the fair-market value of a fee interest in and to the Premises at the time of the ~~1980~~ Prince Transfer.

33. ~~23.~~ Although denominated as a “lease,” the Lease between Holding Corp. and ~~Equities~~542 Associates was entered into for the sole purpose of facilitating the Prince Transfer by Holding Corp.

34. ~~24.~~ Upon information and belief, ~~the~~ Silverstein created 542 Associates to realize the value of the Premises through a sale of the Lease instead of the direct sale of the Premises.

35. The intent of the parties in consummating the Prince Transfer was for Silverstein ~~to cause Equities Associates,~~ as cooperative sponsor, and creator and sole principal of Holding Corp. to sell the Premises to the Debtor.

36. In May of 2015, Holding Corp. converted the Premises to a retail condominium.

37. Upon information and belief, 60G is the owner of the retail condominium in which the Premises are located and is the assignee of Holding Corp.'s interest as "landlord" under the Lease.

38. The transfer to 60G was merely part of an overall scheme by the Defendants to deprive the Debtor of its ownership interest in the Premises, evidenced by the terms of 60G's mortgage note, which requires 60G to evict the Debtor and re-let the Premises at market neutral terms.

39. After purporting to take title to the Premises, 60G immediately embarked upon a campaign to terminate the Debtor's tenancy and deprive the Debtor of its valuable property interest.

B. The Economic Terms of the Prince Transfer

~~25. — The "rent reserved" under the Lease is fixed throughout its term at 19.99% of the "net operating expenses of the building."~~

~~26. — The rent under the Lease is calculated based upon the Debtor's allocated portion of the operating expenses and property taxes for the Building.~~

~~27. — The rent reserved under the Lease is substantially below market rate.~~

40. By virtue of the Prince Transfer, Silverstein forfeited the right to profit from the Premises.

41. Upon information and belief, the Prince Transfer was intended to transfer all property rights associated with the commercial portion of the Building to Prince, including the right to profit from the Lease.

42. Although denominated as "rent," the rent reserved was proportionate to and represented the share of operating expenses ("Maintenance") attributed to the commercial portion of the Building.

43. ~~28.~~ No part of the rent payable under the Lease is attributable to ~~the~~ Holding Corp's profit.

44. Holding Corp., as landlord²s under the Lease, derived no profit from the rent generated by the Lease.

45. The rent stated on the first page of the Lease provides, in relevant part:

an annual rental of \$7,076.46 for the first year, and 19.99% of the *net expenses of the building*, on an accrual basis, as defined in paragraph 43 for each subsequent year

See Exhibit A at 1 (emphasis added).

46. Paragraph 42 of the Rider to Lease provides, in relevant part:

The annual rental rate after the first year of the lease will be 19.99% of the net expenses, as *defined in paragraph 43D*, of the most recent calendar year for which an accounting of the Corporation's expenses has been delivered to the Tenant.

See id. ¶ 42 (emphasis added).

47. Paragraph 43 of the Rider to Lease provides, in relevant part:

A. The actual rent due after the first year of the lease will be 19.99% of the *Corporation's net expenses*, as defined in paragraph 43D, during the current calendar year....

B. In the event the rental rate exceeds the actual rent due, all monied paid to the Landlord in excess of the actual rent due *must be returned to the Tenant* within 30 days after receipt by the Tenant from the Landlord *of an accounting of said expenses*[.]

D. Net expenses are accrued expenses related to the *operation of the building* for a calendar year, including depreciation of capital assets. Accrued expenses do not include expenditures during the year for goods and services benefiting other calendar years of expenditures for capital improvements. Capital improvements are those which have

the effect of improving the physical structure of the building, but which are not considered repairs or maintenance. Capital Improvements shall be further defined according to the regulations of the Internal Revenue Service.

See id. ¶ 43 (emphasis added).

48. Upon information and belief, the rental provisions of the Lease reinforce the requirement that the “Landlord” own the entire building.

49. ~~29.~~ Upon information and belief, the economic features of the Lease, including its 199-year term and the obligation of the Debtor to pay only for its proportionate share of the cooperative’s expenses ~~of the Building, similar to maintenance payments~~, provide the Debtor with the economic equivalent of ownership of the Premises.

C. The ~~Income Tax Treatment~~ Benefits of the Prince Transfer

~~30.~~ Prior to 2007, in order to qualify as a “cooperative housing corporation” under section 216 of the Internal Revenue Code, at least 80% of the corporation’s gross income must derive from “tenant-stockholders” and thus, no more than 20% of ~~the~~ corporation’s ~~yearly~~ gross income could derive from operating a trade or business or from a commercial lease (the “**80/20 Rule**”). *See* 26 U.S.C. § 216(b)(1)-(2).

50. ~~31.~~ Upon information and belief, because of the 80/20 Rule, the rent due under the Lease necessarily was ~~limited to~~ capped at 19.99% of the corporation’s net operating expenses.

51. Upon information and belief, because the cooperative corporation did not operate at a profit, its net operating expenses were equal to its gross income. See 26 U.S.C. § 216(b)(1)(C).

52. By capping rent under the Lease at 19.99% of the cooperative corporation’s net operating expenses, rent was capped at 19.99% of the cooperative gross revenue.

53. Accordingly, the Lease was designed to satisfy the 80/20 Rule.

54. ~~32.~~ Upon information and belief, the only ~~function~~ purpose of the rental

structure under the Lease was ~~to obtain tax deductible benefits afforded by~~ for Holding Corp. to maintain its tax status as a “cooperative ownership and avoid recognition of capital gains inherent to a sale or exchange of housing corporation” for and allow its tenant-stockholders to deduct their proportionate share of real estate taxes and interest.

55. The rental structure served to treat the Debtor as other shareholders in the cooperative - bound to pay a monthly maintenance predicated on its proportionate share of the operating expenses of the cooperative.

56. Whereas the shareholders of the residential units own shares, the Debtor owns the Premises by virtue of its acquisition of the Lease.

57. ~~33.~~ In December 2007, the 80/20 Rule was repealed from the Internal Revenue Code to the extent that co-ops with substantial commercial income can now qualify for “cooperative housing corporation” status by satisfying one of two other tests. *See* Treas. Reg. §1.528-6.

D. The Sham Mortgage & Alleged “Insurance Default”

58. ~~34.~~ In May of 2015, Holding Corp. purported to sell its interest in the commercial unit to 60G, which financed the purchase with the proceeds of a \$12,900,000 secured loan from Meadow Partners LLC (the “**Mortgage**”).

59. ~~35.~~ Upon information and belief, the Mortgage was part of an overall scheme to deprive the Debtor of its property rights, evidenced by the terms of the promissory note, which required 60G to evict the Debtor and re-let the Premises at market neutral terms.

60. ~~36.~~ Upon information and belief, the campaign to evict the Debtor based on an alleged “insurance default” was similarly motivated by Defendants’ desire to reap a windfall by “owning” the Premises free and clear of the Debtor’s proprietary interest.

61. Because the Premises were sold to the Debtor under the Prince Transfer Documents, to which Holding Corp. was bound, at the time Holding Corp. sold its purported interest in the premises to 60G, Holding Corp., in fact, had no interest in the Premises to sell because such interest resided in the Debtor.

62. Subsequent to the purported sale of the Premises by Holding Corp to 60G, and the commencement by 60G of its scheme to deprive the Debtor of its property rights, 60G, in fact, had no legal right to prosecute its litigation to recover the Premises.

63. Upon information and belief, 60G's campaign to evict the Debtor from the Premises was wrongful.

64. Upon information and belief, at the time 60G prosecuted its litigation to evict the Debtor from the Premises, it had no legal right to do so.

AS AND FOR COUNT I

65. ~~37.~~ The Debtor repeats and realleges each of the allegations set forth above with the same force and effect as if fully set forth at length herein.

66. ~~38.~~ The determination of whether a "lease" exists for purposes of section 365 of the Bankruptcy Code focuses on the economic substance of the agreement rather than its form or label.

67. ~~39.~~ The Lease is not the type of transaction that is entitled to the protections and priority in payment provided to landlords under section 365 of the Bankruptcy Code.

68. ~~40.~~ The Prince Transfer Documents memorialized the transfer ~~by Equities Associates to the Debtor,~~ which was binding upon Holding Corp., of ~~its~~ an ownership interest in and to the Premises.

69. ~~41.~~ The Lease is not a true lease.

70. ~~42.~~ The economic substance of the Prince Transfer establishes that the parties intended the Lease to function, at most, as a proprietary lease in conjunction with a sale of the Premises.

71. ~~43.~~ The economic substance of the Prince Transfer as a whole, establishes that the parties intended the Prince Transfer to be a sale of the Premises to the Debtor.

AS AND FOR COUNT II

72. 60G's prosecution of its litigation to evict the Debtor from the Premises was wrongful.

73. As a result of 60G's wrongful actions, the Debtor has been denied its right, title, and interest in and to the Premises.

74. Therefore, the Debtor is entitled to a judgment against 60G in an amount to be determined at a trial of this adversary proceeding.

WHEREFORE, the Debtor requests ~~(a)~~ the entry of an order and judgment (a) declaring that (i) the Lease is not a true "lease" as that term is used in section 365 of the Bankruptcy Code, (ii) the Lease is not subject to the provisions of section 365 of the Bankruptcy Code; and (iii) the Prince Transfer Documents memorialized the transfer by ~~Equities Associates~~ Holding Corp. to the Debtor of its interest in and to the Premises; and ~~(biv)~~ the Debtor is the owner of the Premises; (b) for damages against 60G, in an amount to be determined at a trial of this adversary proceeding ; and (c) granting the Debtor such other and further relief as the Court deems just and proper.

Dated: New York, New York

~~November 22, 2019~~ August 28, 2020

ROSEN & ASSOCIATES, P.C.

*Counsel to the Debtor ~~and Debtor~~
~~in Possession~~ Plaintiff*

By: /s/ Sanford P. Rosen
Sanford P. Rosen

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<u>Insertion</u>	
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Split/Merged cell	
Padding cell	

Redline Summary:		
No.	Change	Text
1-2	Change	Counsel to the Debtor and Debtor —in Possession <u>Plaintiff</u>
3-4	Change	Adv. Proc. No. — <u>19</u> -
5-6	Change	— <u>08714</u> (RDD)
7	Insertion	<u>AMENDED</u> COMPLAINT FOR DECLARATORY RELIEF
8	Insertion	<u>2.</u> Venue is proper in this District
9	Insertion	<u>3.</u> The statutory predicate for the

10	Insertion	<u>4._____</u>
11	Deletion	2. The Debtor agrees to the entry of
12	Insertion	<u>5._____</u>
13	Deletion	3. The Debtor is a corporation, duly
14	Insertion	<u>6._____</u>
15	Deletion	4. The Debtor has occupied certain
16	Insertion	occupied certain commercial property ⁺ <u>consisting of two retail store premises</u> (the "Premises")
17	Insertion	(the "Premises"), ⁺ located in a building situated
18	Insertion	assignee of 542 Equity Associates ₊
19	Insertion	<u>7._____</u>
20	Deletion	5. The Lease is for a term of 99 years
21	Deletion	has two 50-year options to renew .
22-23	Deletion	6._____The
24	Insertion	<u>, the</u> extended term of the Lease runs
25	Insertion	<u>8._____</u>
26	Deletion	7. Upon information and belief, Holding
27-28	Change	the state of New York in or about 1990 <u>1980</u> .
29	Insertion	<u>9._____</u>
30	Deletion	8. Upon information and belief, 60G
31	Deletion	A. History of the Premises & Events Preceding the Sale
32	Deletion	9._____
33	Moved from	In May of 2015, Holding...to a retail condominium.
34	Moved from	10. Upon information and belief, 60G is the owner of the...Corp.'s interest as

35	Deletion	landlord
36	Moved from	under the Lease.
37	Deletion	11. —
38	Moved from	The transfer to 60G was...the Debtor of its
39	Deletion	Lease
40	Moved from	, evidenced by the terms...market neutral terms.
41	Deletion	12. —
42	Moved from	After
43	Deletion	taking
44	Moved from	title to the Premises, 60G immediately embarked
45	Deletion	on
46	Moved from	a campaign to terminate...property interest.
47-48	Deletion	13. — At all relevant times
49	Insertion	<u>from June 5, 1974 through April 1980</u> , the Building was
50	Insertion	, the Building was <u>owned</u> indirectly
51	Deletion	indirectly owned and controlled by David Silverstein (“Silverstein”)
52	Insertion	David Silverstein (“Silverstein”) <u>acting through 542... (“542 Associates”).</u>
53-54	Change	<u>11. Upon information and...control of its affairs.</u>
55	Insertion	<u>12. —</u>
56	Deletion	14. Upon information and belief, Silverstein
57-58	Insertion	<u>13. Prior to April 1980, the...tenant of the Building.</u>
59-60	Insertion	<u>14. Upon information and...with 542 Associates.</u>

61-62	Change	15. Upon information and belief, in or around <u>on April 11,</u> 1979, Silverstein
63-64	Change	1979, Silverstein decided <u>caused 542 Associates and Holding Corp.</u> to
65-66	Change	to convert <u>enter into</u> the
67-68	Change	the residential apartments in...unit to the Debtor <u>Lease as part of his plan...the sale of the Lease.</u>
69	Moved from	16. On April 11, 1980, in...effort to convert the
70-71	Change	residential apartments to...to Holding Corp. <u>Upon information and...Premises to the Debtor.</u>
72-73	Change	17. At <u>Upon information and belief, prior to the</u>
74-75	Change	the time <u>conversion</u> of the
76	Insertion	of the <u>Building to a</u> cooperative
77-78	Change	cooperative conversion, as an alternative to a...lease in the Premises , Silverstein
79-80	Change	, Silverstein was , <u>acting in</u> the
81	Insertion	the <u>capacity of cooperative sponsor, and sole principal of both</u>
82-83	Change	principal of both Equities <u>542 Associates and Holding Corp.</u>
84	Insertion	Associates and Holding Corp., <u>offered to sell the...in the Premises.</u>
85-86	Insertion	<u>18. Upon information and...in the Premises.</u>
87	Insertion	<u>19.</u>
88	Deletion	18. Upon information and belief, prior
89	Insertion	Debtor agreed to the terms of the <u>purchase and sale of the Premises</u>
90	Insertion	sale of the Premises <u>through a series of...of a long-term lease.</u>
91	Insertion	<u>20.</u>
92	Moved to	<u>On April 11, 1980, in...effort to convert the</u>
93	Insertion	<u>Building to a...to Holding Corp.</u>
94-95	Insertion	<u>21. Upon information and...in the cooperative.</u>

96-97	Insertion	<u>22. Upon information and...became a cooperative.</u>
98-99	Insertion	<u>23. Upon information and...Holding Corp.</u>
100	Insertion	<u>24.</u>
101	Deletion	19. The agreement
102-103	Change	The agreement of <u>between</u> Silverstein
104	Insertion	Silverstein, <u>as cooperative sponsor...and Holding Corp.</u> , and the Debtor resulted in the
105	Deletion	and delivery of three agreements, all executed simultaneously on April 11, 1980:
106-107	Change	Holding Corp., as “landlord” and Equities <u>542</u> Associates as “tenant” (i.e., the
108	Insertion	Associates as “tenant” (i.e., the Lease), <u>executed on April 11, 1979;</u>
109-110	Change	(ii) an Assignment of Lease, whereby Equities <u>542</u> Associates assigned to the Debtor
111	Insertion	its interest in and to the Lease, <u>executed on April 22, 1980;</u> and
112	Insertion	(iii) a security agreement <u>executed April 11, 1980,</u> between
113-114	Change	between Equities <u>542</u> Associates and the Debtor, which
115-116	Change	obligation of the Debtor to pay Equities <u>542</u> Associates \$40,000 (the “Purchase
117	Insertion	<u>25.</u>
118	Deletion	20. The Prince Transfer Documents memorialized
119-120	Change	Documents memorialized the transfer by Equities Associates <u>of the Premises</u> to the Debtor
121-122	Change	to the Debtor of its interest.
123-124	Change	<u>26. The Prince Transfer Documents were duly recorded</u> in
125-126	Change	in and to <u>the Office of</u> the
127-128	Change	the Premises <u>City Register of the City...County on June 2, 1980.</u>
129	Insertion	<u>27.</u>
130	Deletion	21. The Debtor subsequently paid the

131-132	Change	subsequently paid the Purchase Price to Equities <u>542 Associates</u> in full.
133	Insertion	<u>28.</u>
134	Deletion	22. Upon information and belief,
135	Insertion	Upon information and belief, <u>at the time of the...fact one and the same.</u>
136-137	Insertion	<u>29. Upon information and...portion to the Debtor.</u>
138-139	Insertion	<u>30. Upon information and...portion of the Building.</u>
140-141	Insertion	<u>31. Holding Corp., as alter...Transfer Documents.</u>
142-143	Change	<u>32. Upon information and...indicate that that</u> the Purchase Price represented
144	Deletion	the Premises at the time of the 1980 Prince Transfer.
145	Insertion	<u>33.</u>
146	Deletion	23. Although denominated as a “lease,”
147-148	Change	Lease between Holding Corp. and Equities <u>542 Associates</u> was entered into for
149	Insertion	facilitating the Prince Transfer <u>by Holding Corp.</u>
150	Insertion	<u>34.</u>
151	Deletion	24. Upon information and belief,
152-153	Change	Upon information and belief, the <u>Silverstein created 542...sale of the Premises.</u>
154-155	Change	<u>35. The</u> intent of the parties in consummating
156-157	Change	Prince Transfer was for Silverstein to cause Equities Associates, <u>as cooperative sponsor,...of Holding Corp.</u> to sell the Premises to the Debtor.
158	Insertion	<u>36.</u>
159	Moved to	<u>In May of 2015, Holding...to a retail condominium.</u>
160-161	Insertion	<u>37. Upon information and belief,</u>
162	Moved to	<u>60G is the owner of the...Corp.’s interest as</u>
163	Insertion	<u>“landlord”</u>

164	Moved to	<u>under the Lease.</u>
165	Insertion	<u>38.</u>
166	Moved to	<u>The transfer to 60G was...the Debtor of its</u>
167	Insertion	<u>ownership interest in the Premises</u>
168	Moved to	<u>, evidenced by the terms...market neutral terms.</u>
169	Insertion	<u>39.</u>
170	Moved to	<u>After</u>
171	Insertion	<u>purporting to take</u>
172	Moved to	<u>title to the Premises, 60G immediately embarked</u>
173	Insertion	<u>upon</u>
174	Moved to	<u>a campaign to terminate...property interest.</u>
175-176	Deletion	25. — The “rent reserved” under...of the building.”
177-178	Deletion	26. — The rent under the Lease...taxes for the Building.
179-180	Deletion	27. — The rent reserved under...below market rate.
181-182	Insertion	<u>40. By virtue of the Prince...from the Premises.</u>
183-184	Insertion	<u>41. Upon information and...profit from the Lease.</u>
185-186	Insertion	<u>42. Although denominated as...of the Building.</u>
187	Insertion	<u>43.</u>
188	Deletion	28. No part of the rent payable under
189-190	Change	under the Lease is attributable to the <u>Holding Corp’s profit.</u>
191-192	Change	<u>44. Holding Corp., as</u> landlord
193-194	Change	landlord’s <u>under the Lease, derived no</u> profit
195	Insertion	profit <u>from the rent generated by the Lease.</u>
196-197	Insertion	<u>45. The rent stated on the...in relevant part:</u>
198	Insertion	<u>an annual rental of...for each subsequent year</u>
199	Insertion	<u>See Exhibit A at 1 (emphasis added).</u>
200-201	Insertion	<u>46. Paragraph 42 of the Rider...in relevant</u>

		<u>part:</u>
202	Insertion	<u>The annual rental rate...delivered to the Tenant.</u>
203	Insertion	<u>See id. ¶ 42 (emphasis added).</u>
204-205	Insertion	<u>47. Paragraph 43 of the Rider...in relevant part:</u>
206	Insertion	<u>A. The actual rent due...current calendar year....</u>
207	Insertion	<u>B. In the event the...of said expenses[.]</u>
208	Insertion	<u>*****</u>
209	Insertion	<u>D. Net expenses are...or maintenance. Capital</u>
210	Insertion	<u>Improvements shall be...Revenue Service.</u>
211	Insertion	<u>See id. ¶ 43 (emphasis added).</u>
212-213	Change	<u>48. Upon information and...own the entire building.</u>
214	Insertion	<u>49.</u>
215	Deletion	29. Upon information and belief, the
216	Insertion	its proportionate share of the <u>cooperative's</u> expenses
217-218	Change	expenses of the Building , <u>similar to maintenance payments</u> , provide the Debtor with the economic
219	Deletion	C. The Income Tax
220-221	Change	Tax Treatment <u>Benefits</u> of the Prince Transfer
222	Deletion	30. Prior to 2007, in order to qualify
223	Insertion	216 of the Internal Revenue Code, <u>at least 80% of the...and thus,</u> no more than 20% of
224-225	Change	no more than 20% of a <u>the</u> corporation's
226	Deletion	corporation's yearly gross income could derive from
227	Insertion	"80/20 Rule"). See 26 U.S.C. § 216 <u>(b)(1)-(2).</u>
228	Insertion	<u>50.</u>
229	Deletion	31. Upon information and belief, because
230-231	Change	under the Lease necessarily was limited to <u>capped at</u> 19.99% of the corporation's
232	Insertion	19.99% of the corporation's <u>net operating expenses.</u>

233-234	Change	<u>51. Upon information and...were equal to its gross income.</u>
235	Insertion	gross income. <u>See 26 U.S.C. § 216(b)(1)(C).</u>
236-237	Insertion	<u>52. By capping rent under the...gross revenue.</u>
238-239	Insertion	<u>53. Accordingly, the Lease...satisfy the 80/20 Rule.</u>
240	Insertion	<u>54.</u>
241	Deletion	32. Upon information and belief, the
242-243	Change	information and belief, the only function <u>purpose</u> of the rental structure under the
244-245	Change	rental structure under the Lease was to obtain tax-deductible benefits afforded by <u>for Holding Corp. to...its tax status as a “cooperative</u>
246-247	Change	<u>cooperative ownership and avoid...to a sale or exchange of housing corporation” for...taxes and interest.</u>
248-249	Insertion	<u>55. The rental structure...of the cooperative.</u>
250-251	Change	<u>56. Whereas the shareholders...shares, the Debtor owns</u> the Premises
252	Insertion	the Premises <u>by virtue of its acquisition of the Lease.</u>
253	Insertion	<u>57.</u>
254	Deletion	33. In December 2007, the 80/20 Rule
255	Insertion	<u>58.</u>
256	Deletion	34. In May of 2015, Holding Corp. purported
257	Insertion	<u>59.</u>
258	Deletion	35. Upon information and belief, the
259	Insertion	<u>60.</u>
260	Deletion	36. Upon information and belief, the
261	Insertion	Defendants’ desire to reap a windfall by <u>“owning</u>
262	Insertion	<u>owning”</u> the Premises free and clear of
263-264	Insertion	<u>61. Because the Premises were...resided in the Debtor.</u>
265-266	Insertion	<u>62. Subsequent to the...to recover the Premises.</u>

267-268	Insertion	<u>63. Upon information and...Premises was wrongful.</u>
269-270	Insertion	<u>64. Upon information and...no legal right to do so.</u>
271	Insertion	<u>65.</u>
272	Deletion	37. The Debtor repeats and realleges
273	Insertion	<u>66.</u>
274	Deletion	38. The determination of whether a “lease”
275	Insertion	<u>67.</u>
276	Deletion	39. The Lease is not the type of transaction
277	Insertion	<u>68.</u>
278	Deletion	40. The Prince Transfer Documents memorialized
279-280	Change	Documents memorialized the transfer by Equities Associates to the Debtor, <u>which was binding upon Holding Corp.,</u> of
281-282	Change	of its <u>an ownership</u> interest in and to the Premises
283	Insertion	interest in and to the Premises.
284	Insertion	<u>69.</u>
285	Deletion	41. The Lease is not a true lease.
286	Insertion	<u>70.</u>
287	Deletion	42. The economic substance of the Prince
288	Insertion	<u>71.</u>
289	Deletion	43. The economic substance of the Prince
290	Insertion	<u>AS AND FOR COUNT II</u>
291-292	Insertion	<u>72. 60G’s prosecution of its...Premises was wrongful.</u>
293-294	Insertion	<u>73. As a result of 60G’s...in and to the Premises.</u>
295-296	Insertion	<u>74. Therefore, the Debtor is...adversary proceeding.</u>
297	Deletion	WHEREFORE, the Debtor requests (a) the entry of an order
298	Insertion	the entry of an order <u>and judgment (a)</u> declaring that (i) the Lease is
299-300	Change	Documents memorialized the transfer by

		Equities Associates Holding Corp. to the Debtor of its interest in
301-302	Change	interest in and to the Premises; and (biv) the Debtor is the...proceeding ; and (c) granting the Debtor such other
303-304	Change	November 22, 2019 August 28, 2020
305-306	Change	Counsel to the Debtor and Debtor in Possession / Plaintiff

Statistics:	
	Count
Insertions	191
Deletions	97
Moved from	9
Moved to	9
Style changes	0
Format changes	0
Total changes	306